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7 NATIONAL TPS ALLIANCE, et al.,
8 Plaintiffs,
9 v.
10 KRISTI NOEM, et al.,
11 Defendants.

Case No. 25-cv-01766-EMC (SK)

**ORDER REGARDING PRESIDENTIAL
COMMUNICATIONS PRIVILEGE**

Regarding Docket No. 197

12 This matter comes before the Undersigned on a discovery dispute regarding Defendants'
13 invocation of the presidential communications privilege as to six documents. (Dkt. No. 197.)

14 **BACKGROUND**

15 On June 13, 2025, the parties filed a joint discovery letter brief regarding the propriety of
16 Defendants' presidential communications privilege assertions over eight documents. (Dkt. No.
17 197.) During the June 23, 2025 hearing, Plaintiffs' counsel informed the Undersigned that only
18 six documents remained in dispute. (Dkt. No. 217.) The Undersigned ordered Defendants to
19 produce these documents for *in camera* review. (*Id.*) Upon review of the documents, the
20 Undersigned found that "the documents on their face did not demonstrate that" the presidential
21 communications privilege applies. (Dkt. No. 220.) On June 24, 2025, the Undersigned ordered
22 Defendants to provide a declaration explaining why the privilege applies to the documents in
23 question. (*Id.*) Defendants produced a declaration from Gary M. Lawkowski, Deputy Assistant
24 and Deputy Counsel to the President, on July 3, 2025 (the "Lawkowski Declaration"). (Dkt. No.
25 240.)

26 The Lawkowski Declaration explains that the documents in question each concern, in
27 pertinent part, an email from Matthew R. Ochoa. (*Id.*) Mr. Ochoa is the Director for Interior
28 Enforcement on the Homeland Security Council, a policy counsel to the president

1 “administratively located” within the National Security Council in the Executive Office of the
2 President. (*Id.*) The email was a request to provide specific documents and status updates in
3 preparation for a meeting on Executive Order 14159, which focused on immigration policy. (*Id.*)
4 The requests were directed to the officials at the Department of Homeland Security, Department of
5 Justice, and Department of State. (*Id.*) Mr. Lawkowski provides that the email “reflects the policy
6 priorities for the [Homeland Security Council] and the information required for [the Homeland
7 Security Council] to fulfill their advisory role. (*Id.*)

8 ANALYSIS

9 The presidential communications privilege protects “documents or other materials that
10 reflect presidential decisionmaking and deliberations” *In re Sealed Case*, 121 F.3d 729, 744
11 (D.C. Cir. 1997). Accordingly, the privilege extends only to communications by (1) individuals
12 “close enough to the President to be revelatory of his deliberations or to pose a risk to the candor
13 of his advisers” and (2) “communications that these advisers and their staff author or solicit and
14 receive in the course of performing their function of advising the President on official government
15 matters.” *Id.* at 572. Here, both requirements are met.

16 First, the presidential communications privilege extends to the President, presidential
17 advisors, and “those members of an immediate White House advisor’s staff who have broad and
18 significant responsibility for investigating and formulating the advice to be given to the President
19 on a particular matter.” *Id.* at 757. For example, in *In re Sealed*, the D.C. Circuit held that
20 documents authored by two associate White House Counsel fell within the privilege because the
21 counsel “exercised broad and significant responsibility for gathering information . . . and
22 authoring initial drafts” *Id.* at 758.

23 Like the associate White House Counsel, Ochoa is “close enough to the President.” *See Id.*
24 at 572. Ochoa supports the Homeland Security Advisor and is thus a member of an “immediate
25 White House advisor’s staff.” *See id.* at 757; (Dkt. No. 240.). He holds a director-level position
26 in which he “assists in investigating and formulating advice for the President,” (Dkt. No. 240), as
27 evidenced by his apparent role in gathering information to inform policy decisions related to
28 Executive Order 14159. Ochoa is not “outside the White House in [an] executive branch

1 agenc[y]," *see In re Sealed Case*, 121 F.3d at 752, but rather, works for an advisory council
2 "administratively located . . . in the Executive Office of the President." (Dkt. No. 240.) As such,
3 Ochoa holds "broad and significant responsibility for investigating and formulating the advice to
4 be given to the President" required for application of the presidential communications privilege.
5 *See In re Sealed Case*, 121 F.3d at 757.

6 Second, the communications must relate to the process of advising the President. *Id.* at
7 752. Presidential advisors do not "pull their final advice . . . out of thin air" but "investigate the
8 factual context of a problem in detail, *obtain input from all others with significant expertise in the*
9 *area*, and perform detailed analyses of several different policy options before coming to closure on
10 a recommendation for the Chief Executive." *See Id.* at 750 (emphasis added). Thus, efforts to
11 collect information relevant to policymaking may fall within the privilege. *See id.* at 758
12 (extending privilege to "outlines of issues and questions that needed to be investigated"). Here,
13 Ochoa was seeking input from relevant experts to inform presidential decision-making regarding
14 immigration policy. As such, his email relates to the process of advising the President.

15 The six withheld documents were solicited by a presidential advisor's staff member for the
16 purpose of investigating the advice to be given to the President and are thus subject to the
17 presidential communications privilege.

18 The presidential communications privilege is not absolute, and it can be overcome by a
19 showing "that the evidence sought [is] directly relevant to issues that are expected to be central to
20 the trial" and "is not available with due diligence elsewhere." *Id.* at 754. The Undersigned need
21 not address this issue because Plaintiffs have not argued that their need for the documents
22 outweighs the privilege. (Dkt. No. 197.)

23 It is HEREBY ORDERED that Defendants need not produce the six documents withheld
24 under the presidential communications privilege.

25 **IT IS SO ORDERED.**

26 Dated: July 7, 2025



27
28 SALLIE KIM
United States Magistrate Judge